

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PETER A. SPALLUTO)	
and ACCESS WITH SUCCESS, INC.,)	
Plaintiffs)	CIVIL ACTION NO.: 05-cv-10385EFH
)	
v.)	
)	
HDP, INC.,)	
Defendant)	
)	

**MEMORANDUM IN SUPPORT OF THE
PLAINTIFFS' MOTION FOR A PROTECTIVE ORDER**

Recently, the defendant re-noticed the taking of the deposition of Peter Spalluto. Mr. Spalluto has not yet testified in a deposition in this case. His inability to appear at a deposition last winter for health reasons was the subject of a motion to dismiss. The Court denied the defendant's motion to dismiss. The defendant also recently re-noticed the deposition of the plaintiff, Access with Success, Inc. The defendant conducted the deposition of Access with Success, Inc. for more than an hour on January 24, 2007 by its designee under Rule 30(b)(6). The date selected by defendant's counsel for the deposition of Mr. Spalluto and the second deposition of Access with Success, Inc. was April 16, 2008.

Plaintiffs' counsel communicated to defense counsel that Mr. Spalluto, a quadriplegic Florida resident, could not appear in Boston for the deposition on April 16, 2008 and asked that both depositions be re-scheduled to a mutually convenient date between July 28 and August 4, 2008 when Mr. Spalluto planned to be in the Boston area to attend a four-day seminar. Defense counsel would not agree to a date in that range, because he has a vacation planned for that time, but offered to re-schedule the depositions

to another date in April, May, or June.¹ Plaintiff's counsel asked whether it would be possible instead for one of the other 23 lawyers in defense counsel's Boston office to take the plaintiffs' depositions in late July or early August. The parties agreed to disagree and this motion is now before the Court.

Last April, the Court granted a continuance of a trial due to Mr. Spalluto's health. He submitted a doctor's note stating that it is unreasonably risky for him to fly to a cold climate. He is quadriplegic. He has coronary artery disease and is at risk of respiratory illness associated with air travel in winter months. His health has not improved dramatically since 2007.

Rule 26(c)(1) of the Federal Rules of Civil Procedure states, "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . specifying terms, including time and place, for the disclosure or discovery." For the reasons stated above, the plaintiffs respectfully request that the defendant will be ordered to take the plaintiffs' depositions on one of the following dates: July 28, 29, 30, 31, or August 1 or not take the depositions at all. The plaintiffs also respectfully request that the Court will schedule the trial to take place in August 2008.

Respectfully submitted, The Plaintiffs,
Peter A. Spalluto and Access With Success,
Inc.

By their Attorneys,

/s/Nicholas S. Guerrero
Nicholas S. Guerrero, BBO#551475

¹ History sometimes repeats itself. The parties were in the same dilemma a year ago. Mr. Spalluto's annual trip to Boston in early August apparently coincides with defense counsel's annual vacation. The defendant's selection of certain deposition dates and its intransigence on keeping them is also reminiscent of events in 2007.

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CERTIFICATE OF SERVICE

I, Nicholas S. Guerrero, hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on this 15th day of April 2008.

Dated: April 15, 2008

/s/Nicholas S. Guerrero
Nicholas S. Guerrero